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Before the
FEDERAL COMMUNICATIONS COMMISSION DA No. 94-1198
Washington, D.C. 20554

DISPATCHED BY

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)
) PP Docket No. 93-253
Waiver of Section 24.813)
of the Commission's Rules --)
General Application Requirements)
for the Broadband Personal)
Communications Service)

ORDER

Adopted: October 25, 1994

Released: October 25, 1994

By the Chief, Private Radio Bureau.

1. The Commission, through the Chief of the Private Radio Bureau pursuant to delegated authority, on its own motion, waives certain provisions of Section 24.813(a) of the Commission's rules, for purposes of short-form applications (Forms 175) to be filed for A and B block licenses in the broadband personal communications service (PCS). We find that requiring the submission of some ownership information may be unduly burdensome and will not serve the underlying purpose of the ownership disclosure rules.

2. Section 24.813(a) of the Commission's rules provides that parties filing the short-form application, Form 175, to participate in broadband PCS auctions shall include in an exhibit, *inter alia*:

(1) A list of any business five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business's principal business and a description of each such business's relationship to the applicant.¹

¹ See Section 24.813(a)(1) of the Commission's rules, *Fourth Memorandum Opinion and Order*, PP Docket 93-253, FCC 94-264 at Appendix B, (released Oct. 19, 1994).

(2) A list of any party which holds a five percent or more interest in the applicant, or any entity in which a five percent or more interest is held by another party which holds a five percent or more interest in the applicant (e.g., If Company A owns 5% of Company B (the applicant) and 5% of Company C, then Companies A and C must be listed on Company B's application).²

Section 24.813(a) also requires:

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application.³

Section 24.819 of the Commission's rules provides that the Commission may waive a broadband PCS rule if the underlying purpose of the rule will not be served by its application in a particular case, and grant of a waiver is otherwise in the public interest; or if the unique facts and circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest.

3. Potential applicants for broadband PCS frequency blocks A and B, applications for which are due to be filed Oct. 28, 1994, and which are scheduled for auction to begin Dec. 5, 1994, have brought to our attention two problems with the scope of the ownership disclosure rules contained in Section 24.813(a).⁴ First, under our rules, applicants are required to list in their short-form applications all businesses in which each attributable stockholder owns at least 5 percent. This requirement would necessitate reporting of interests in firms with no relation to the services for which licenses are being auctioned, and for many companies, particularly investment firms with diverse holdings, might be extremely burdensome, especially when calculating indirect ownership interests in outside firms using the multiplier. We believe that, for purposes of short-form application processing, requiring stockholders in applicants to report *all* firms in which they hold an interest of 5 percent or more would be excessively burdensome.

² See Section 24.813(a)(2) of the Commission's rules, *Fifth Report and Order*, PP Docket 93-253, FCC 94-178 at Appendix B (released July 15, 1994).

³ *Id.* at § 24.813(a)(4).

⁴ See, e.g., *ex parte* submission in PP Docket 93-253 of Dow, Lohnes & Albertson, Oct. 21, 1994; *ex parte* submission in PP Docket 93-253 of Gurman, Kurtis, Blask & Freedman, Oct. 12, 1994.

4. The purpose of the ownership disclosure requirements is to allow the Commission to determine who is the real party in interest,⁵ to determine compliance with the anticollusion rules⁶ and ownership restrictions such as the multiple-and cross-ownership rules⁷ and the alien ownership restrictions.⁸ All applicants already must certify that they are in compliance with these regulations, and the applicants themselves should be able to supply the bulk of the information required by Section 24.813(a) without significant burden. However, we believe that requiring that information about all attributable stockholders' other interests be provided on the short-form application would not serve these purposes. Moreover, since short-form procedures are generally designed to "reduce the administrative burdens at the initial stages of the auction process, avoid unnecessary delay in the initiation of service, and encourage applicants to participate in the process,"⁹ we find that relaxing the disclosure requirements in this regard serves the public interest. Consequently, we waive the information disclosure requirement of Section 24.813(a)(1) and 24.813(a)(2) with respect to other, outside ownership interests of attributable stockholders of applicants, except that direct, attributable ownership interests in other Commercial Mobile Radio Service licensees or applicants shall be disclosed.¹⁰ All long-form reporting requirements will continue to apply.

5. Applicants have also brought to our attention an additional problem caused by the requirement of Section 24.813(a)(4) to submit signed and dated copies of partnership agreements. These parties point out that partnership agreements often discuss strategic business objectives and financial and business obligations, including bidding strategies, and might be highly competitively sensitive. In addition, the identities of partners and other attributable parties, and their stake in the applicant, are fully disclosed pursuant to the rules. We agree that submission of the information in partnership agreements with the short-form application might be highly detrimental and inequitable to applicants that are partnerships and would not serve the purposes described above. Consequently we waive the requirement that partnerships submit a signed and dated copy of the partnership agreement along with the short-form application. The requirement to submit the contents of the agreements with the long-form application remains will apply to winning bidders. We remind applicants, however,

⁵ Compare 47 C.F.R. §§ 22.13, 24.413; see also *Real Party in Interest Disclosure*, 55 RR 2d 1053 (1982).

⁶ See Section 1.2105 of the Commission's rules.

⁷ See Sections 24.204 and 24.229(c) of the Commission's rules.

⁸ See 47 U.S.C. § 310(b).

⁹ *Second Report and Order*, PP Docket 93-253, 9 FCC Rcd 2348, 2376 ¶ 162 (1994).

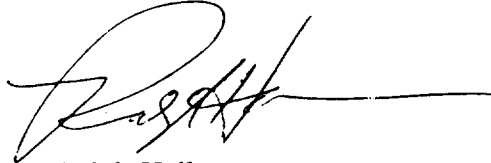
¹⁰ See Section 20.6 of the Commission's Rules, *Third Report and Order*, GN Docket No. 93-252 at Appendix B (released Sept. 23, 1994).

that in accordance with Part 0 of the Commission's rules they may submit the required information from the partnership agreement in confidence.¹¹

6. Accordingly, IT IS ORDERED that the requirements of Sections 24.813(a)(1) and 24.813(a)(2) ARE WAIVED to the extent described above with respect to short-form applications (Forms 175) for A and/or B block broadband PCS licenses.

7. IT IS FURTHER ORDERED that the requirement of Section 24.813(a)(4) that a signed and dated copy of the partnership agreement be included with the short-form application for A and/or B block broadband PCS licenses IS WAIVED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'R. Haller', followed by a horizontal line.

Ralph Haller
Chief
PRIVATE RADIO BUREAU

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¹¹ See 47 C.F.R. § 0.459.